

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CAROL LEWIS,

Plaintiff,

v.

Case 1:15-cv-13530-NMG

SYLVIA BURWELL,
Secretary of the U.S. Department of Health
and Social Services,

Defendant.

MS. LEWIS' MOTION TO CORRECT EAJA AWARD

On March 30, 2019, this Court issued its Memorandum and Order awarding Ms. Lewis attorney's fees under EAJA. See Dkt. # 106. There, the Court found that the Secretary's position was not substantially justified and that Ms. Lewis was otherwise entitled to an EAJA award. The Court further found that a COLA adjustment was appropriate. However, the Court declined to find that a "special factor" rate enhancement was appropriate and also declined to award fees for the LCD challenge before the Secretary. The Court ultimately awarded \$49,477 in fees, based on overall COLA adjusted fees/costs (\$101,096) minus LCD fees/costs calculated using standard billing rates (\$52,245) and costs already awarded (\$626). *Id.* at 12.

Respectfully, the Court's award appears to reflect a mathematical error. The LCD fee/cost number used by the Court was calculated using standard billing rates, not the COLA rates approved by the Court. Adjusting the LCD fees using the COLA rates approved by the Court results in COLA LCD fees/costs of \$29,098. Subtracting these fees from the overall COLA adjusted fees,

results in a fee amount of \$71,997. Further subtracting the \$626 in costs already awarded results in a final figure of \$71,371.

Accordingly, for the reasons set forth above, Ms. Lewis respectfully requests that the Court amend its Order to award fees and costs in the amount of \$71,371.

Dated: April 8, 2019

Respectfully submitted,
CAROL LEWIS, By her attorneys,
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CERTIFICATE OF ATTEMPTED CONFERENCE

Pursuant to Local Rule 7.1(a)(2), starting on Tuesday, April 2, 2019, Ms. Lewis' counsel attempted to meet and confer with the Secretary's counsel (Ms. Johnson) to determine whether the Secretary opposed a motion to correct the mathematical error and, if so, what the basis of opposition was. Finally, at ~4:00pm on Friday, April 5, 2019, Ms. Johnson called Ms. Lewis' counsel (Ms. Parrish). During the call, Ms. Johnson expressed the view that the Court made a mathematical error and had awarded \$7,000 *too much*. Ms. Lewis' counsel tried to narrow the issues by simply obtaining agreement that there was an error (regardless of in which direction). Ms. Johnson refused. Accordingly, none of the issues were narrowed and Ms. Lewis' counsel still does not know the basis for the Secretary's opposition. Ms. Johnson simply indicated that she would oppose a motion for correction of a mathematical error. Copies of the email traffic detailing the above are attached.